

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>MICHAEL L. ALDEN,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL NO. 06-942-JPG</b>
	)	
<b>SHERIFF KELLERMAN,</b>	)	
	)	
<b>Respondent.</b>	)	

**MEMORANDUM AND ORDER**

**GILBERT, District Judge:**

This action is before the Court to rule on Petitioner’s motion to reconsider the Court’s order and judgment dismissing the action (Doc. 6). Technically, a “Motion to Reconsider” does not exist under the Federal Rules of Civil Procedure. The Seventh Circuit has held, however, that a motion challenging the merits of a district court order will automatically be considered as having been filed pursuant to Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. *See, e.g., Mares v. Busby*, 34 F.3d 533, 535 (7<sup>th</sup> Cir. 1994); *United States v. Deutsch*, 981 F.2d 299, 300 (7<sup>th</sup> Cir. 1992). As noted in *Deutsch*, “in cases where it is unclear whether a motion challenging a judgment on the merits is made under Rule 59(e) or Rule 60(b),” the date of service will determine how the motion will be treated. Thus, ““if the motion is served within ten days of the rendition of judgment, the motion falls under Rule 59(e); if it is served after that time, it falls under Rule 60(b).”” *Id.* (citations omitted).

Judgment was entered in this action on November 27, 2006, and the instant motion was filed on December 12, 2006. Petitioner states that he placed the motion in the outgoing mail on

December 8, 2006. Giving Petitioner the benefit of the doubt regarding time for mailing, the Court finds that the motion was filed within the 10-day period. *See* FED.R.CIV.P. 59(e). Therefore, under *Deutsch*, the Court will construe the motion as a motion to alter or amend judgment, filed pursuant to Rule 59(e), which may only be granted if a movant shows there was mistake of law or fact or presents newly discovered evidence that could not have been discovered previously. *Matter of Prince*, 85 F.3d 314 (7<sup>th</sup> Cir. 1996), *reh'g and suggestion for reh'g en banc denied, cert. denied* 117 S.Ct. 608; *Deutsch v. Burlington Northern R. Co.*, 983 F.2d 741 (7<sup>th</sup> Cir. 1993).

Upon review of the record, the Court remains persuaded that its ruling dismissing the case pursuant to Rule 4 of the Rules Governing Section 2254 Cases in United States District Courts was correct. Therefore, the instant motion is **DENIED**.

**IT IS SO ORDERED.**

**Dated: December 20, 2006**

s/ J. Phil Gilbert  
**U. S. District Judge**